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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

MAY 12 2004

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In re Applications of	)	MB Docket No. 04-144
	)	
PISCATAWAY BOARD OF EDUCATION	)	
	)	
For Renewal of License	)	Facility ID No. 52686
For Noncommercial Educational	)	File No. BPED-19980427WA
Station WVPH(FM), Piscataway, New Jersey	)	
	)	
and	)	
	)	
KING'S TEMPLE MINISTRIES, INC.	)	
	)	
For Construction Permit	)	Facility ID No. 91347
For a New Noncommercial Educational	)	File No. BPED-19980805MB
FM Station, Plainfield, New Jersey	)	

To: Marlene H. Dortch, Secretary

Attention: Arthur I. Steinberg,  
 Administrative Law Judge

**OPPOSITION TO  
 MOTION FOR LEAVE TO AMEND**

Piscataway Board of Education ("Piscataway"), by counsel, pursuant to §1.45 of the Commission's Rules, hereby respectfully submits this Opposition to the "Motion for Leave to Amend" filed May 10, 2004 in this proceeding by King's Temple Ministries, Inc. ("KTM"). In support hereof, Piscataway submits the following:

1. By *Order* issued May 11, 2004, the Presiding Judge in this proceeding has stayed the hearing in this proceeding. Nevertheless, out of an abundance of

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caution, it is unclear as to whether all procedural deadlines in this proceeding have been stayed as well. Therefore, Piscataway submits this objection to KTM's motion and attempt to amend its application.

2. On May, 6, 2004, Piscataway submitted a "Petition for Reconsideration" in response to the Media Bureau's issuance of a *Hearing Designation Order, DA 04-957 (released April 9, 2004) (hereinafter "HDO")*, wherein Piscataway, in the context of the Commission's approval of the 1998 license renewal application for Radio Station WVPH-FM, was adjudged to operate Radio Station WVPH-FM less than 12 hours each day and, therefore, was ordered to attend a special expedited hearing to establish the terms and conditions of a time sharing agreement with KTM. Therein, Piscataway argued that the conclusions of fact and law in the *HDO* with regard to Piscataway's broadcast operations were materially in error. In addition, Piscataway argued that KTM's ownership structure has undergone a major change since its application BPED-19980805MB was submitted, and its application must therefore be dismissed in accord with Section 73.3573 of the Commission's Rules.

3. KTM's motion and amendment is an apparent attempt to cure the defects in its application. Nowhere does KTM indicate that its amendment is for informational purposes only. Nowhere does KTM disavow any advantage it may receive should its amendment be accepted. As will be shown below, acceptance of KTM's amendment at this very late stage is not only contrary to established FCC policy, but prejudicial to Piscataway.

4. The Commission's records should indicate that KTM filed its FCC Form 340 application on August 5, 1998. On Page 3 of the KTM application, KTM provided the following information about its ownership structure:

<b><u>Name and Address</u></b>	<b><u>Office Held</u></b>	<b><u>Director/Board Member</u></b>	<b><u>Ownership %</u></b>
Gary Kirkwood (no address provided)	President	Yes	25%
Thomas Mobley (no address provided)	Vice President	Yes	25%
Sandra Crofton (no address provided)	Secretary	Yes	25%
Vernon Kirkwood (no address provided)	Treasurer	Yes	25%

5. KTM's disclosure of its ownership information raises several important questions. First, at no time subsequent to the submission of its 1998 application did KTM provide the required addresses for each of its principals, despite the fact that the instructions to FCC Form 340 clearly indicated the necessity to reveal such information. Thus, KTM never provided a complete application proposal. Second -- and of much greater significance -- almost the complete ownership and governing structure of KTM has changed since 1998 and at no time did KTM ever apprise the Commission of this fact in the context of application BPED-19980805MB./<sup>1</sup>

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<sup>1</sup> Section 1.45 of the Commission's Rules require that applicants such as KTM keep the Commission apprised on an ongoing basis of changes to the information specified in pending applications. At a minimum, KTM had thirty days in which to amend its application when a change to its ownership structure occurred. Given the fact that KTM's major change in ownership structure since 1998 requires the dismissal of its application under Section 73.3573 of the Commission's Rules, questions are raised as to whether KTM intentionally failed to amend its application so as to avoid the requisite consequences of its actions.

6. It is important to point out that while KTM did nothing to report its ownership changes within the context of application BPED-19980805MB, KTM was active before the FCC in acquiring an existing radio station. On September 13, 2002, an FCC Form 315 transfer of control application was filed by K&M Broadcasters, Inc., licensee of Radio Station WKMB-AM (32985) at Stirling, New Jersey, seeking the transfer of control of the licensee company to KTM. *See, BTC-20020913AAG*. The FCC granted this application on November 4, 2002, and the transaction was consummated in early 2003. Shortly thereafter a new FCC Form 323 Ownership Report was submitted on behalf of WKMB-AM (a copy of which is attached to the "Petition for Reconsideration as Exhibit No. 2), and the following important information was disclosed:

- All of the outstanding stock in World Harvest Communications, Inc. (the new corporate licensee of WKMB-AM) is held by KTM.
- The officers and board members of KTM are as follows:

Andre Crawford (Board Member) - no votes

Cynthia Crawford (Executive Secretary &  
Board Member) - no votes

David Kirkwood (Board Member) - no votes

Gladys M. Harris (Board Member) - no votes

Kim Mobley (Treasurer & Board Member) -  
14.2% votes

Melissa E. Prayer (Financial Secretary &  
Board Member) - 14.2% votes

Miron Harris (Board Member) - 14.2% votes

Rev. Gary Kirkwood (Senior President &  
Board Member) - 14.2% votes

Thomas E. Mobley (Vice President &  
Board Member) - 14.2% votes

Toya-Pope Kirkwood (Board Member) - no votes

Valerie Jenkins (Board Member) - 14.2% votes

7. A comparison of the 1998 ownership structure of KTM that was reported in application BPED-19980805MB to the 2003 ownership structure of KTM that was reported in the recent WKMB-AM ownership report reveals the following dispositive changes:

- a. There were four (4) board members of KTM in 1998; there are eleven (11) board members today.
- b. There were four (4) voting board members of KTM in 1998; there are seven (7) voting board members today.
- c. In 1998, Gary Kirkwood, Thomas Mobley, Sandra Crofton and Vernon Kirkwood collectively had 100% ownership and 100% voting power; today two of the original four individuals (Sandra Crofton and Vernon Kirkwood) are no longer principals of KTM, and Gary Kirkwood and Thomas Mobley retain only 28.4% of the voting power. In other words, **since 1998 there has been a 71.6% change in the voting power of the KTM principals.**
- d. Of the eleven (11) current board members of KTM, only two (2) of those individuals were board members in 1998. Therefore, **there has been an 82% change in the board structure of KTM since 1998.**

8. KTM's ownership structure changed several times between 1998 and the present, and at no time was the Commission apprised of these facts within the context of application BPED-19980805MB. While KTM has argued in its motion that the uncertain status of its application was a reason for not amending its application, KTM has not provided one iota of FCC precedent or policy to support such a waiver of the requirements of Section 1.45 of the Commission's Rules. In fact, during the

pendency of KTM's FCC application, it filed ownership information updates in the State of New Jersey State, as follows:

- a. On January 11, 2001, KTM reported that it had seven (7) members. See, Certificate of Amendment to KTM's Certificate of Incorporation. (*Exhibit No. 3 to Petition for Reconsideration*).
- b. On February 19, 2004, KTM reported to the State of New Jersey that it has only three (3) officers and directors -- Gary Kirkwood (President), Melissa Prayer (Secretary) and Thomas Mobley (Vice President). See, copy of February 19, 2004 Annual Report. (*Exhibit No. 4 to Petition for Reconsideration.*)<sup>2</sup>

9 In light of the foregoing, the changes in the ownership structure of KTM triggers Section 73.3573 of the Commission's Rules, which states in pertinent part:

**§73.3573 Processing FM broadcast station applications.**

(a) Applications for FM broadcast stations are divided into two groups:

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations.

\* \* \* \*

A major change in ownership is a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed.

\* \* \* \*

(3) A new file number will be assigned to a reserved band application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraph (a)(1) of this section.

10. There is no question that, pursuant to Section 73.3573 of the Commission's Rules, there has been a major change in the ownership structure of

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<sup>2</sup> It is interesting to note that KTM's Year 2004 Annual Report contains corporate information that is contrary to that reported in the most recent FCC ownership report for WKMB-AM.

KTM since 1998, which requires a new file number be assigned to KTM's 1998 application, if such circumstances permit.

11. When the Commission amended its broadcast application processing policy in 1984 to adopt what is now FCC Rule 73.3573, it clearly stated that original parties to an application must retain a 50% ownership interest in the application to avoid the "major change" consequences. *See, Processing of Broadcast Applications, 56 RR 2d 941 (1984)*. There is no question that were KTM to have amended its application as it was required to do, such an amendment would have been considered a "suicide" amendment requiring the assignment of a new file number and a dismissal of its application from consideration in the context of Piscataway's license renewal application. *See, C. Ray Helton, 66 RR 2d 1736 (M. Med. Bur. 1989) at para.*

12. In this instance, KTM's application cannot be returned to the processing line and processed at a later date. Since KTM's 1998 application was filed in the context of a Public Notice filing deadline in response to the filing of the WVPF-FM license renewal application, KTM does not now have the opportunity to resurrect its application.

13. Assuming, arguendo, that the Commission could forgive KTM for failing to amend its application to report the changes in ownership, and irrespective of the "major change" implications of Section 73.3573 of the Commission's Rules, there is absolutely no justification to permit KTM to amend its application now that the *HDO* has issued. The Commission's Rules require that post-designation amendments be supported by good cause. As such, KTM would have to demonstrate that it acted

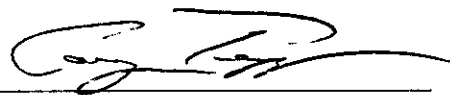
with due diligence, that the amendment was not required by the voluntary act of KTM, that Piscataway would not be unfairly prejudiced by acceptance of the amendment, and that KTM would not gain an advantage if the amendment was accepted. *See, Erwin O'Connor Broadcasting Co., 22 FCC 2d 140, 143; 18 RR 2d 820 (Rev. Bd. 1970).* KTM has not been diligent, and the acceptance of such an amendment at this late date would certainly prejudice the outcome of these matters as it would permit an otherwise disqualified application to proceed.

14 While the Commission can certainly accept KTM's amendment for informational purposes, Section 73.3573 of the Commission's Rules would still require the dismissal of KTM's application due to the major change in its ownership structure. KTM cannot amend its application but "freeze" its ownership structure to that which existed in 1998.

WHEREFORE, the foregoing premises considered, KTM's motion must be DENIED, and KTM's application must be dismissed, with prejudice.

Respectfully submitted,

**PISCATAWAY BOARD OF EDUCATION**

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May 12, 2004



CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 12th day of May, 2004, I have served a copy of the foregoing "**Opposition to Motion for Leave to Amend**" first-class, postage-prepaid, on the following:

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